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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/778,242   | 02/06/2001  | Matt Beaumont        | 07319/096001        | 4078             |
| 20985  | 7590        | 08/06/2002           | EXAMINER            |                  |
| FISH & RICHARDSON, PC<br>4350 LA JOLLA VILLAGE DRIVE<br>SUITE 500<br>SAN DIEGO, CA 92122 |             |                      | LAVARIAS, ARNEL C   |                  |
|  |             | ART UNIT             | PAPER NUMBER        |                  |
|  |             | 2872                 |                     |                  |
| DATE MAILED: 08/06/2002  |             |                      |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 09/778,242             | BEAUMONT, MATT      |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Arnel C. Lavarias      | 2872                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1-33 are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

|  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-13, 32, drawn to a lighting apparatus including an optical filter, memory unit, and calibration data, classified in class 356, subclass 416.
  - II. Claims 14-31, 33, drawn to a method of using the lighting apparatus, classified in class 362, subclass 322.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the apparatus as claimed can be used to practice another and materially different process, such as wavelength tuning of radiation emitted from a source or detected by a detector.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

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5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
6. This application contains claims directed to the following patentably distinct species of the claimed invention:

**Applicant is required to elect one of the following species if election is made to**

**Invention I:**

Species 1: apparatus comprising an optical device including an optical filter wherein the gradient axis extends around a circumference of the filter. Claims 1, 4.

Species 2: apparatus comprising an optical device including an optical filter wherein the filter includes a position marking. Claims 1-3, 5-6.

Species 3: apparatus comprising an optical device including an optical filter wherein calibration data includes a table of points indicating a specified position. Claims 1-3, 5, 7-8.

Species 4: lighting apparatus comprising an optical source wherein the controller includes a lookup/memory table. Claims 9-12, 32.

Species 5: lighting apparatus comprising an optical source wherein the optical filter includes a hub which contains the filter. Claim 9-11, 13, 32.

**Applicant is required to elect one of the following species if election is made to**

**Invention II:**

Species 1: a method wherein the profile used to move the optical filter is a profile that drives a motor. Claims 14-15.

Species 2: a method wherein the specified point is the slope curve is at 50 percent of the cut-on point. Claims 14, 16-18.

Species 3: a method wherein the specified point in the slope curve is a value that allows any color at any point in the filter to be represented by a single value. Claims 14, 16-17, 19.

Species 4: a method wherein the optical filter assembly is substantially round. Claims 14, 20-23.

Species 5: a method wherein said determining values comprises determining a first area of the segment encompassed by the first aperture. Claims 14, 20-22, 24.

Species 6: a method wherein said compensating comprises determining an area of the first aperture and an area of the second aperture. Claims 14, 20-22, 25.

Species 7: a method wherein said forming data comprises determining a specified point in a slope curve. Claims 26-29.

Species 8: a method wherein said determining individual features comprises scanning the filter to determine the transmittances of the filter at different locations. Claims 26-27, 30.

Species 9: a method comprising forming a plurality of optical devices including optical filters and calibrating a plurality of optical filters. Claim 31, 33.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims

readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

7. A telephone call was not made to the Applicant to request an oral election due to the complexity of the above restriction requirement.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

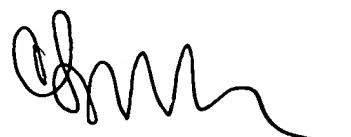
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arnel C. Lavarias whose telephone number is 703-305-4007. The examiner can normally be reached on M-F 8:30 AM - 5 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cassandra Spyrou can be reached on 703-308-1687. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7722 for regular communications and 703-308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1782.

Arnel C. Lavarias  
July 29, 2002



Cassandra Spyrou  
Supervisory Patent Examiner  
Technology Center 2800